

STATE OF MICHIGAN
COURT OF APPEALS

STACY GOINS,

Plaintiff-Appellee,

v

LISA CLIFTON,

Defendant-Appellant.

UNPUBLISHED

April 8, 2004

No. 245951

Wayne Circuit Court

LC No. 01-123795 NI

Before: Zahra, P.J., and Saad and Schuette, JJ.

PER CURIAM.

Defendant appeals as of right a jury verdict which awarded plaintiff \$20,000.00 for the injuries she sustained. Plaintiff was a passenger in a vehicle driven by defendant which was involved in a single-vehicle traffic accident. As a result of her injuries, plaintiff filed this action, claiming an injured back and fractured left leg. On August 14, 2002, the trial court denied defendant's motion for summary disposition. The motion was based upon defendant's assertion that plaintiff failed to establish that her injuries met the third party threshold for recovery of non-economic damages. Following presentations of evidence, both parties moved for directed verdicts, which the trial court denied. After deliberations, the jury found for plaintiff, concluding that her injury resulted in a serious impairment of her left leg.¹ We reverse.

I. FACTS

Plaintiff was an unbelted rear passenger who was ejected from the vehicle in a rollover accident on January 11, 2001. She was taken by ambulance to the emergency room and complained of left knee pain. Several hours later, plaintiff left the emergency room against medical advice. Later that same day, plaintiff went to another emergency room for evaluation, where x-rays were taken that revealed a fractured proximal fibula. The fracture did not require surgery or casting, and plaintiff was given a leg immobilizer and instructions for non-weight

¹ Question three of the jury verdict form indicates the jury found that the plaintiff's injury did not result in serious impairment of her back.

bearing for several weeks. Plaintiff was also provided with crutches and pain medication before being discharged.

As part of the evidence presented at trial, a video deposition of plaintiff's treating physician was presented. The doctor testified that upon examination of plaintiff on January 18, 2001, and review of x-rays, he found that plaintiff suffered a closed fracture of the proximal fibula of the left leg. The doctor testified that he saw plaintiff three more times during the next four months, during which time her leg was healing well. During that time, plaintiff was also directed to complete a course of physical therapy sessions to aid in her rehabilitation. However, after plaintiff failed to show for several scheduled physical therapy appointments and then informed them she was going on vacation for nearly ten days, she was discharged from their care for noncompliance.

The doctor then approved plaintiff's request to return to work on May 15, 2001, and instructed plaintiff to return to his office in four weeks for follow up. After plaintiff missed that next appointment, numerous attempts were made to contact plaintiff at her residence to no avail. Plaintiff returned to her treating physician's office almost sixteen months later, on September 10, 2002, for reevaluation. Plaintiff's doctor stated that on that date he found that plaintiff's leg fracture had completely healed in anatomic position and alignment and that she was able to return to work without restrictions. Plaintiff was instructed to follow up with her doctor on an as needed basis and returned to work on May 15, 2001.

II. SUMMARY DISPOSITION

Defendant contends that the trial court erred as a matter of law in denying her motion for summary disposition where plaintiff's leg fracture was well healed within twelve weeks. We agree.

A. Standard of Review

On appeal, a trial court's decision on a motion for summary disposition is reviewed de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003).

B. Analysis

The trial court denied defendant's motion for summary disposition, citing the *Kern*² case in its decision. While the trial court determined as a matter of law that plaintiff's fractured leg created an impairment of a body function, it failed to establish how that impairment affected plaintiff's ability to lead a normal life, pursuant to MCL 500.3135.

MCL 500.3135(1) states:

² *Kern v Blethen-Coluni*, 240 Mich App 333; 612 NW2d 838 (2000).

“A person remains subject to tort liability for noneconomic loss caused by his or her ownership, maintenance, or use of a motor vehicle only if the injured person has suffered death, serious impairment of body function, or permanent serious disfigurement.”

MCL 500.3135(7) further states that:

“As used in this section, ‘serious impairment of body function’ means an objectively manifested impairment of an important body function that affects the person’s ability to lead a normal life.”

In making a determination of whether an impairment of a body function is serious and interferes with a person’s ability to lead a normal life, courts should consider factors such as the extent of the injury, treatment required, duration of the disability, the extent of the residual impairment, and the prognosis for eventual recovery. *Kern, supra*, at 341. In assessing the extent of the injury, a court may compare the plaintiff’s lifestyle before and after the injury. *May v Sommerfield (After Remand)*, 240 Mich App 504, 506; 617 NW2d 920 (2000).

In this case, plaintiff suffered the fracture of her left fibula in the January 11, 2001 automobile accident. Although she initially had to use crutches and an immobilizer for her injury, the fracture never required surgery or casting. Moreover, after two weeks, plaintiff’s doctor told her to begin putting weight on the injured leg. Plaintiff’s injury eventually healed completely and in the anatomically correct position with proper alignment on its own, with no indication of residual impairment. Plaintiff did receive some pain medication and underwent several physical therapy sessions, but was allowed to return to work with no restrictions only four months after the accident on May 15, 2001.

Plaintiff claims that as a result of her injury, she had quit her job because the pain in her leg made it difficult to dance in high heels. Based upon her testimony, however, plaintiff actually left her place of employment because she got pregnant. Additionally, plaintiff claims she had difficulty going to her gym to workout, that she had to take baths instead of showers, and, that going up and down the stairs became very difficult as a result of her leg injury. In previous cases, this Court has held that where persons suffered injuries such as compression fractures of vertebra likely to cause lifelong pain, twisted, shattering fractures of the arm causing the person to be physically impaired for months following the accident, and, comminuted fractures of the arm requiring multiple surgeries to repair, these injuries did not meet the serious impairment threshold under the statute. *Walker v Caldwell*, 148 Mich App 827; 385 NW2d 703 (1986); *Farquhar v Owens*, 149 Mich App 208; 385 NW2d 751 (1986); *Spies v Parker*, unpublished per curiam opinion of the Court of Appeals, issued 6/25/02 (Docket No. 227581). We find the apparent lack of medical treatment and the lack of any interruption in her ability to lead a normal life to be indicative of plaintiff’s injuries in this matter, as contemplated by *Kern, supra*.

While there is little doubt that plaintiff suffered a fractured left fibula, the facts of the case are nonetheless distinguishable from those in *Kern, supra*. The plaintiff in that case suffered a displaced, comminuted and oblique fracture of the right femur that required hospitalization for six days, as well as surgery to attach an external fixator to the outside of his

right femur by four pins drilled into the bone. For the nearly eleven weeks he wore the fixator device the plaintiff was unable to walk, after which he underwent an additional surgery to remove the fixator device and the four pins. *Kern, supra*, at 335.

When denying the motion for summary disposition in this case, the trial court failed to set forth the manner in which the left leg injury plaintiff sustained affected her ability to lead a normal life. As such, the serious impairment threshold was not met as a matter of law and defendant should have been granted her motion for summary disposition.

In light of our conclusion that the trial court should have granted defendant's motion for summary disposition, we decline to examine the question of directed verdict.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Brian K. Zahra
/s/ Henry William Saad
/s/ Bill Schuette